
OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMES E. KIMMEL,
Complainant,

v.

LAPORTE COUNTY BOARD OF COMMISSIONERS
Respondent.

Formal Complaint No.
18-FC-82

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the LaPorte County Board of Commissioners (“Commissioners”) violated the Open Door Law¹ (“ODL”). The Commissioners responded to the complaint through attorney Douglas L. Biege. In accordance with Indiana Code

¹ Ind. Code §§ 5-14-1.5-1 to -8

§ 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 29, 2018.

BACKGROUND

The Complainant, James Kimmel, alleges two of the three members of the LaPorte County Board of Commissioners (“Commissioners”) met with an outside party to discuss an economic development project. This meeting was not noticed to the public and Complainant argues this is in violation of the Indiana Open Door Law.

The Commissioners argue the meeting was informational only and akin to an administrative function meeting as authorized by Indiana Code section 5-14-1.5-5(f)(2). No other new public business was discussed other than that which had previously been discussed at prior public meetings. One of the Commissioners had just taken office days before and was meeting with a project manager of an existing initiative. The outside entity was known as the Lochmueller Group.

ANALYSIS

1. The Open Door Law (“ODL”)

It is the intent of the Open Door Law (“ODL”) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

The LaPorte County Board of Commissioners is a public agency for purposes of the ODL; and thus, subject to the law's requirements. Therefore, unless an exception applies, all meetings of the Commissioners must be open at all times to allow members of the public to observe and record.

1.1 Official Action

Generally, under the ODL, every meeting of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. Ind. Code § 5-14-1.5-3. Under the ODL, a *meeting* is:

[A] gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.

Ind. Code § 5-14-1.5-2(c).

Notably, "official action" means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

Ind. Code § 5-14-1.5-2(d).

Therefore when two of the three Commissioners met to take official action (receiving information) on public business, the Open Door Law would typically be triggered. The mere fact of "receiving information" is not a lower threshold than the

other five official actions. Notice would be required for another of these actions under Indiana Code section 5-14-1.5-5.

However, the legislature has provided a notice exception for certain subject matters and actions pursuant to Indiana Code section 5-14-1.5-5(f)(2). The exception is for county boards of commissioners and town boards only and is known as the administrative function meeting exception to notice. Administrative function meetings are still open to the public and are official meetings, although they do not have to be noticed in advance and can take place anytime and anywhere without prior posted notice.

Naturally, this exception has limitations and it is the guidance of my Office to use administrative function meetings judiciously and only when truly warranted.

Please note the following interpretation of administrative functions from Counselor Joe Hoage in *Opinion of the Public Access Counselor 12-INF-36*:

[D]etermining whether a topic or action is appropriate for an administrative meeting generally requires a highly subjective review of the issues. The ODL does not contain a bright-line list of issues or subjects that are appropriate or prohibited from being discussed at an administrative meeting. Further, my review of the previously held administrative meetings is limited solely to the minutes that have been provided. In reviewing the previous opinions of the public access counselor that opined that an administrative meeting was proper, the subject matter primarily dealt with the function of carrying out the everyday or routine tasks necessary to ensure the

proper management of the county or town. See Opinion of the Public Access Counselor 07-FC250. It is my opinion that anytime there is the slightest hesitation on whether an administrative meeting would be appropriate, a meeting should not occur.

If the meeting of the two Commissioners and the Lochmueller Group was truly a status update and no substantive new public business was discussed, it could presumably qualify as an administrative function meeting. Otherwise, the meeting would need to be noticed and the public has the right to attend.

CONCLUSION

Based upon the foregoing, it is the Opinion of the Public Access Counselor that the LaPorte County Board of Commissioners likely held an administrative meeting, however, there is insufficient information provided to make a definitive determination.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor